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Supreme Court of the United States

OCTOBER TERM, 1943.

No. 170

ARTHUR H. STOIKE,
Petitioner-Respondent Below,
—against—

**FIRST NATIONAL BANK OF THE CITY OF
NEW YORK,**
Appellant Below.

**PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF NEW
YORK, AND BRIEF IN SUPPORT THEREOF.**

DANIEL WILLIAM LEIDER,
Counsel for Petitioner.

ROBERT S. GARSON,
Of Counsel.

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OCTOBER TERM, 1943.

No.

ARTHUR H. STOIKE,

Petitioner-Respondent Below,

—against—

FIRST NATIONAL BANK OF THE CITY OF NEW YORK,

Appellant Below.

Petition for Writ of Certiorari.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Arthur H. Stoike, respectfully shows:

1. **Application for Leave to Submit Petition on Less Than the Required Number of Copies of the Record.**

Petitioner has been unable to secure the required number of copies of the record and respectfully moves this Court that this petition be submitted and accepted by this Court on less than the required number of copies.

2. **Summary Statement of the Matter Involved.**

This action was brought to recover overtime pay under the Fair Labor Standards Act of June 25th, 1938 (52 Stat. 1060, Ch. 676; 29 U. S. Code, Sec. 201, et seq.) and was submitted to the Supreme Court of the State of New York, Appellate Division, First Department, on an

agreed statement of facts, pursuant to Sections 546 and 548 of the New York Civil Practice Act. On the decision of the court, judgment in favor of the plaintiff petitioner was entered on July 21st, 1942. By permission of the Supreme Court, Appellate Division, First Department, the defendant, First National Bank, appealed to the Court of Appeals of the State of New York. That court reversed the Appellate Division and directed judgment in favor of the defendant. This petition is on behalf of the plaintiff, Arthur H. Stoike.

Summarized, the facts are these: The defendant is a national banking association, originally chartered in 1863, which ranks amongst the largest national banks in the country (pp. 2-8, fols. 4-23). It does a general business both for customers located within and without the State of New York, numbering among them railroads, insurance companies, automobile manufacturers and others (pp. 2-9, fols. 5-25). The defendant bank accepts for collection from its customers and undertakes the collection of checks, drafts, coupons and commercial paper of all kinds, payable within the State of New York, and at other places throughout the country (p. 9, fols. 26-27). The bank also undertakes the forwarding of funds within the State of New York and all over the country (pp. 11-12, fols. 32-35). The bank lends money to borrowers located within the State of New York, and in other states against notes and loan agreements, with or without collateral (p. 12, fols. 35-36). Collateral may exist of conditional sales contracts or the like in connection with equipment purchases (p. 12, fols. 35-36). In short, defendant bank engages in a general commercial banking business as well as a trust company business (pp. 9-14, fols. 25-41). Defendant also undertakes some production for commerce in that it prepares cashier's check and customer's credit reports, which are used in and transmitted in interstate commerce (p. 14, fols. 40-41). Many of the other services

performed by the bank are actually production of goods under the definitions given in the Act.

On November 29th, 1937 plaintiff was employed by the defendant for a six night week, at eight hours a night, or forty-eight hours per week, as a nightporter in and about the building at No. 2 Wall Street, New York City (p. 16, fol. 48). For the purpose of this action it was specifically stipulated that the plaintiff was an employee of the defendant (p. 2, fol. 4). The building houses defendant's banking facilities and contains in addition a large number of floors which are rented out as office space (pp. 2-3, fols. 6-7). In the period during which the Fair Labor Standards Act was in effect, plaintiff worked forty-eight hours per week for fifteen weeks (p. 18, fol. 54). The plaintiff during six of the fifteen weeks in question devoted approximately one-half of his working hours to cleaning in and about the actual banking premises (p. 18, fol. 54). During this entire period plaintiff's salary was \$27.00 per week, or at the rate of \$.5625 per hour (p. 19, fol. 55). He received no overtime pay.

The Court of Appeals said in its opinion that

"* * * Plaintiff does not claim that we are dealing with a problem involving 'the production of goods for commerce'."

The Wage and Hour Division of the Department of Labor appeared in the Court of Appeals by permission of the Court of Appeals as *amicus curiae* and was permitted to argue. A claim as to production for commerce was made by the Wage and Hour Division and is and was concurred in by plaintiff. The Court of Appeals found that the cleaning operations which plaintiff was required to perform in defendant's banking quarters were not so closely related to the many banking services performed that we can say as a matter of law that plaintiff's cleaning was

a part of such banking services, and, therefore, that he was "engaged in interstate commerce". The Court of Appeals in an opinion by Judge Lewis reversed the Appellate Division and directed judgment for the defendant. It is from this decision of the Court of Appeals that petitioner comes praying for a Writ of Certiorari.

3. Jurisdiction.

The date of the decision of the Court of Appeals of the State of New York of which review is here sought, is April 15th, 1943. The original remittitur is dated April 16th, 1943. The remittitur was thereafter amended by order of the Court of Appeals dated May 27th, 1943. An order making the judgment of the Court of Appeals, the judgment of the Supreme Court of the State of New York, was entered in the Appellate Division of the Supreme Court, First Judicial Department, on the 19th day of June, 1943. Judgment on the remittitur was entered in Supreme Court, State of New York, on the 8th day of July, 1943. The statute granting the power to review herein is Judicial Code, Sec. 237(b), U. S. Code, Title 28, Sec. 344(b). There is here involved the Fair Labor Standards Act of June 25th, 1938, 52 Stat. 1060, Chapter 676; 29 U. S. Code, Sec. 201 et seq., and the Court of Appeals of the State of New York decided against plaintiff's right to a recovery thereunder. The statute is set forth at length in the appendix. The amended remittitur recites that "this cause was brought under the provisions of a federal statute, namely, the Fair Labor Standards Act of June 25th, 1938 (52 Stat. 1060, Ch. 676; 29 U. S. Code, Sec. 201 et seq.), and an interpretation of that statute was necessarily involved in the decision by this Court".

The following case is believed to sustain the jurisdiction of the Supreme Court of the United States:

Pederson v. Fitzgerald Construction Co., decision handed down February 8, 1943, 63 S. C. 558.

In the foregoing case a writ of certiorari was allowed by this Court under the identical statute here involved and under identical circumstances, the Court of Appeals having held that the employee was not doing such work as to be covered by the Fair Labor Standards Act.

This case is within the jurisdictional provisions in that this action was brought under the Fair Labor Standards Act of June 25th, 1938 (52 Stat. 1060, Ch. 676; 29 U. S. Code, Sec. 201, et seq.). A final judgment has been rendered in this cause by the Supreme Court of the State of New York on remittitur of the Court of Appeals of the State of New York, the highest Court of the State of New York in which a decision in the suit could be had.

4. Reasons for Issuance of Writ.

1. The Court of Appeals of the State of New York has decided highly important questions based on the interpretation and application of a United States Statute. This was the first time this question was presented to the State Court of Appeals and if this Court grants certiorari, it will be the first time that this court will consider the application of the statute to this set of facts.

2. The decision of the Court of Appeals of the State of New York is directly in conflict with the decisions of this Court under similar but more limited statutes, and with the decisions of this Court under this statute.

3. There are a large number of cases presently pending in which the same question arises, and a larger number with similar questions. Many, if not all of these cases, are awaiting the disposition of this appeal can be disposed of, if this court will grant this petition and decide this case on the merits.

4. There are presently pending similar cases in which the lower court has taken an opposite point of view from that of the Court of Appeals in the instant case, and a decision of this court on the question here presented is necessary as a guide when this question is again presented.

ARTHUR H. STOIKE,
Petitioner.

By DANIEL WILLIAM LEIDER,
Counsel for Petitioner.

